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1. General issues about Body Corporates:

1.1 What is a Body Corporate?

A Body Corporate is the legal entity automatically created when a Community Title Scheme(CTS) is Registered in the Dept of Natural Resources (previously The Titles Office).

A Community Title Scheme is a method of Titling and subdividing land, or land and buildings, such that multiple Lots are created according to a Community Management Statement(CMS). The CMS describes the Scheme, the number of Lots, Lot Entitlements for each of the Lots, the By-Laws of the Scheme, any Exclusive Use allocated to a Lot, and other details.

Every Community Title Scheme has a Body Corporate, comprises at least 2 Lots, and has some Common Property. Each and every Owner of a Lot is automatically a member of the Body Corporate.



1.2 Are there different types?

Yes. Most Bodies Corporate are for Community Title Schemes which are simple and 'Basic', but some Community Title Schemes can be part of a 'layered' arrangement of other Schemes, with a Principal Body Corporate at the top, and one or more Schemes below. Most often these more complicated arrangements are established because there are 'mixed uses' in the building or community which is the subject of the Titling arrangement e.g. a building which comprises a strata hotel plus a residential apartment component, and maybe some retail shops.

1.3 What is a Lot - what is a Unit?

Lots are created by the subdivision process and the creation of the Community Title Scheme - which must comprise at least 2 Lots and some Common Property.

Lots have individual 'title' under the Land Titles Act and have individual ownership - the Common Property is jointly owned by the Body Corporate, which in effect is all the Owners co-jointly.

A 'unit' is just a more common name for a residential Scheme Lot i.e. 'home unit', but the term 'unit' is not now used in the Body Corporate and Community Management legislation, and your Body Corporate manager will always refer to 'Lots'.

Real confusion can arise when a developer, or more usually the developer's architect and surveyor, establish a project where the 'unit' numbers on site are different from the Lot number for that dwelling - so for example 'unit' 6 is also actually Lot 4.

When the Scheme is set up in this way it causes confusion and mistakes for the life of the Scheme and so when we work with developers it is one of the issues we strive to get right.



1.4 What are my rights?

As an Owner of one or more Lots in a Community Title Scheme, you are also a member of the Body Corporate for that Scheme, and your rights really form the basis of the whole point of the Body Corporate and Community Management Act (BCCMA).

There is a lot of emphasis in this legislation on ensuring all Owners' rights are adequately protected, and that all matters of the Body Corporate are conducted in as transparent a manner as is reasonably possible - for example, recent amendments to the legislation allow any and all Owners to attend any Committee meeting - the Committee might not (unlikely) allow them to participate, but at least they can observe and listen in. [see 9.2 for guidelines re attendance]

As well as protecting individual Owners' rights, the legislation is also all about 'Community' living, and so the rights of Owners has to be balanced with providing a framework for community living - not always easy!

What are my responsibilities?

Just as your rights have certain protection under the BCCMA, you are also a member of a community if you are an Owner in a Community Title Scheme, and you have a responsibility to, for example, pay your Levies fully and on time, comply with the By-laws of your Community Title Scheme - but good community living goes beyond mere observance of the By-laws, and extends to constant consideration of others in your community. Your neighbours in a Body Corporate are generally in very close proximity, and tolerance and consideration are the essence of good community living.



2. About Insurance issues:

2.1 What insurance do I need?

[Caution! The information below is of a general advice nature - there are often variations in Scheme type, building materials, insurance policy details, which can affect what is covered and how a policy responds to a claim. It is essential that you seek good advice from your insurance company/agent/broker, and acquaint yourself with the details of the insurance policy your Body Corporate has taken out.]

The Body Corporate in most Schemes (speaking generally here, there are Scheme arrangements where different rules can apply) is responsible for arranging and maintaining adequate insurance over the Common Property - this would normally include all the building structures, and so, as an Owner in a normal residential Scheme you do not need to insure the 'building'. What isn't insured by the Body Corporate is your furniture, furnishings and possessions, carpets, drapes, ceiling fans, airconditioners, and hot water systems - therefore you need to take out a 'Contents Cover' policy to cover those items, and ensure also that it has a Public Liability component (most do) to give protection for an accident within your Lot. The legislation now requires the Annual General Meeting documentation include details about the insurance cover the Body Corporate has taken out - but you can obtain these details at any time from your Body Corporate manager.



2.2 What things can I claim on?

If the type of Scheme requires the Body Corporate to insure the building structures, this cover may extend to structure which is actually inside your Lot - for example, if storm damage caused water damage to internal ceilings and walls this is likely to be covered by the Body Corporate's policy, but note that damage to carpets would be your responsibility, and should be covered by your contents policy. Some 'fixtures & fittings' within your Lot may also be covered in some circumstances, e.g. damage to a kitchen bench, damage to a shower screen fixture may be covered by the Body Corporate policy.

There are many claims issues which appear 'grey' and not clear-cut and so it is always necessary to get prompt advice from your Body Corporate manager if a claim situation arises. In some instances you may be required to pay any 'excess' under the Body Corporate's policy.

2.3 What things can't I claim on?

Generally, the Body Corporate insurance will not be able to 'respond' to claims involving your personal property i.e. property that isn't owned by the Body Corporate. For example, a pipe in the basement drips on to your vehicle and damages the paint work - it may seem logical for the Body Corporate insurance to pay for this, but your car isn't owned by the Body Corporate and such a claim is likely to be rejected, - if you have comprehensive type cover policy for your car it would likely respond in this instance. Again, if there is the slightest doubt, ask.

2.4 How do I make a claim?

Contact your Body Corporate manager as a matter of urgency and they will provide advice and details required to enable a claim to be lodged.

2.5 What if I'm not satisfied with a claim result?

If the Body Corporate's insurance policy is involved you can lodge a complaint or appeal to the insurer who must respond properly and fully to such an appeal. The Committee of the Body Corporate may also become involved in any dispute issue.



2.6 Who does repairs under a claim?

If the Body Corporate's insurance policy is responding to a claim you will be told how and when the repairs are going to be carried out - these will be arranged by the insurance company and in some circumstances an assessor will also be involved, quotes for repairs obtained, and approval given for a trade to proceed etc.

3. About Money issues:

3.1 Why an Admin Fund?

The Administrative Fund is one of two funds(the other is the Sinking Fund)that are a statutory requirement for a Body Corporate to not only have established, but to then operate strictly in accordance with the legislative requirements under the Body Corporate and Community Management Act (BCCMA) and the particular Module Regulations applicable to the Scheme.

The Admin Fund is used to pay the Body Corporate's expenses which are of a non-capital nature such as Insurance, any Resident Manager's salary, Body Corporate manager's fees, gardening and other grounds and minor or recurring building maintenance. Generally everything other than expenditure on major improvements, and significant non-recurring plant and building maintenance are funded from the Admin Fund.

The Body Corporate has a statutory requirement to ensure that Owners are levied to an extent sufficient to supply the Admin Fund with the resources necessary to fulfill its obligations under the Act.

3.2 Why a Sinking Fund?

The Sinking Fund is one of two funds(the other is the Admin Fund)that are a statutory requirement for a Body Corporate to not only have established, but to then operate strictly in accordance with the legislative requirements under the Body Corporate and Community Management Act (BCCMA) and the particular Module Regulations applicable to the Scheme.

The Sinking Fund is used to pay the Body Corporate's expenses which are of a capital nature i.e. expenditure on major improvements, and significant non-recurring plant and building maintenance are funded from the Sinking Fund.

It is also a requirement that the Body Corporate has a long-term(ten year) guide as to the expected maintenance and capital replacement costs likely to be incurred for the building, plant, and grounds - each year's Sinking Fund budget then needs to allocate funding in accordance with this long term plan.

The Body Corporate has a statutory requirement to ensure that Owners are levied to an extent sufficient to supply the Sinking Fund with the resources necessary to fulfil its obligations under the Act.



3.3 Do I pay a fair proportion?

The proportion of the total budgets each Owner pays is determined principally by the Contribution Lot Entitlement Schedule for the Scheme. (There are two Lot Entitlement Schedules, Contribution, and Interest, and they have different functions even if for some Schemes they are numerically the same. The cost of insurance is normally the only expense apportioned according to Interest Lot Entitlements - all other expenses are apportioned by Contribution Lot Entitlements.)

So whether the proportion of Body Corporate expenses you pay is fair, in turn relies on whether the Contribution Lot Entitlement Schedule drawn up for your Scheme is fair and reasonable - many are not.

The Act has, as a fundamental basis, a requirement that the Contribution Lot Entitlements shall all be equal - unless there are very good reasons why they shouldn't be equal. Going back in history a bit, it was quite common for developers to increase Lot Entitlements (and therefore levies) for each floor level in a building, or to give a 3 bedroom unit three times the Entitlements of a 1 bedroom unit in the same building - such practice is now not in accordance with the Act, and any reasons for Lot Entitlement variation need to be significant and able to be substantiated.

If the Lot Entitlements for your Scheme are unfair they can be changed - but the process is often a difficult one. If you want further information on the process for going about this change, please contact us.

3.4 Is my Body Corporate saving enough?

As discussed in 3.2 above, it is the Sinking Fund which is used by a Body Corporate to provision for future expenditure of a capital nature - and it is a statutory requirement that this provisioning must be properly i.e. adequately done. To assist with this process, it is also a statutory requirement for the Body Corporate to have a properly drawn up long-term(10 year) capital maintenance forecast, with costings - usually referred to as a Sinking Fund Forecast Report. It is the intention of the Act that this report will be kept 'refreshed' and up to date and so will be representative of the state and status of the building and all Common Property. If the Sinking Fund report hasn't been redone for a number of years it will almost certainly not be representative of the funding needs of your building, and so it is likely that the Body Corporate will be under-funding the Sinking Fund i.e. not saving enough.

Another scenario which can lead to difficulties is to set the Sinking Fund budget in accordance with what the Sinking Fund report required, but then to fund a purchase of a capital nature from the Sinking Fund but one that was never contemplated in the Sinking Fund report. If this needs to occur, then the Body Corporate should be

increasing the budget the following year to take that capital expenditure into account, but the preferred process wherever possible is to initially set budgets so that they cover the requirements indicated by the Sinking Fund Report, and any additional capital expenditure likely or planned.

3.5 What to do with excess funds?

The Act does not permit a Body Corporate to move any surplus monies from the Sinking Fund to the Admin Fund or vice versa, and the Office of the Commissioner has indicated that they generally take a dim view (and will not approve) of any move to return surplus funds to Owners. So if a Body Corporate finds itself with surplus monies in either fund, the mechanism for correcting this is to simply reduce budgets in the subsequent year, or years, until the surplus is depleted.

Generally, monies should not accumulate and build up year after year in the Admin Fund, but we do recommend budgeting for about a 10% surplus over expected requirements each year. The Sinking Fund is the correct fund where a Body Corporate accumulates money ready to meet the forecast capital expenses per the Sinking Fund Report, but it is not appropriate for a Body Corporate to accumulate substantially more money in the Sinking Fund than plans for its expected use indicate.



4. About Committees:

4.1 What is a Committee?

The Committee is the group of Owners who are appointed (by election or nomination) at each Annual General Meeting, to run the affairs of the Body Corporate for the next 12 months. The Committee comprises an 'Executive' - the Chairman, Secretary, and Treasurer, a number of Ordinary members, and possibly non-voting members (in the case of a Body Corporate with a Resident Manager/Caretaker and/or a Body Corporate Manager, representatives of these two entities are automatically nonvoting members of the Committee).

The Committee of a Body Corporate has wide powers - they effectively are like the Board of Directors of a Corporation, and are democratically appointed in accordance with the Act to run the Body Corporate - and provided they operate within their powers and the requirements of the Act, they should be permitted to 'get on with the job', and be supported by the rest of the Body Corporate.

4.2 Is a Committee necessary?

Not only is it a statutory requirement for there to be a Committee (there is a special and new legislative provision, Div 10, of the Act which allows a Body Corporate to dispense with a Committee and permit a Body Corporate manager to act as their Committee - we expect it to be rarely invoked by a Body Corporate), but we consider an active and properly functioning Committee to be a vital component for a Body Corporate.

A dysfunctional Committee, or a dormant Committee, invariably leads to problems for a Body Corporate.

4.3 How is it elected?

The maximum number of Committee positions is nine - 3 'Executive members', Chairman, Secretary, Treasurer, 4 Ordinary members, and 2 nonvoting members (Resident Manager & Body Corporate Manager). Note that the expression 'Committee positions' was used - because one person may occupy more than one position e.g. one person can be Chairman, and Secretary, and Treasurer, or in another situation a Body Corporate might have elected one person to the Chairman's position but couldn't get sufficient candidates for other positions and so the only other candidate occupied the Secretary and Treasurer positions.

That's the maximum numbers.

With regard to the minimum, there must be at least 3 voting members on a Committee, and this could be one person each as Chairman, Secretary, and Treasurer, however, a person can occupy more than one of the Executive positions, so another arrangement might be that the Committee ends up with person 'A' as Chairman/Treasurer, person 'B' as Secretary, and person 'C' as an Ordinary Committee member.

The Committee is decided each year at the AGM

Nominations are called for Committee positions prior to the financial year end - (Nomination Forms must be sent out to each Owner).

The Committee is elected by Secret Ballot - unless the Body Corporate has decided prior (by a resolution at a General Meeting) that election is by Open Ballot.

If only one nomination for a particular position is received, the person Nominated is duly elected to that position.

A person can't accept a voting position on the Committee if they owe money to the Body Corporate, and neither can a person nominate another person if the person doing the nominating owes the Body Corporate money.



4.4 How do I become a member?

Four principal avenues:

a) you can nominate yourself to be appointed to a position (or more than one position) at the AGM when nominations are called - nominations will be called by way of the Secretary or Body Corporate manager sending out Nomination forms, and this will occur a number of weeks prior to the end of the financial year of your Body Corporate.

b) someone else can nominate you via this Nomination Form - but you must sign the form to indicate your consent to the nomination.

c) if not all positions are filled by way of nominations received before the AGM then remaining positions will be filled by way of calling for nominations from those present at the meeting - if you're at the meeting, you can nominate yourself, or have prearranged to have someone else present nominate you (but you need to be present as well in this situation or have provided the person nominating you with your written consent to the nomination).

d) you can make it known to the Committee that you are interested in serving on the Committee - if a vacancy arises throughout the year it will need to be filled and the Committee is able to invite any eligible Owner to fill a vacancy - if you've let them know prior of your interest, you may get asked by them to join.

4.5 How do I resign?

Simply by sending a communication to that effect to the Secretary or Body Corporate manager - an e-mail would probably do, but a letter faxed or posted would be better.



4.6 How do Committees work?

Committees need to decide themselves how they will organize their affairs to attend to the regular matters of the Body Corporate, and to special issues which will always arise from time to time.

Some Committees decide that they'll have regular, more or less scheduled, meetings - these could be monthly, bimonthly, quarterly etc. Others decide to only get together as a need arises. The Act doesn't require the Committee to have any regular meetings - and apart from an implied requirement for them to formally decide the new budgets for the AGM, there is no requirement in the legislation for them to have a meeting at all.

Committees need to be careful though about holding 'adhoc' or 'informal' meetings, especially if at those meetings any matter of any significance is discussed, or any expenditure is vetted or approved. The only type of Committee Meeting that can be 'recognized' is one that has been properly called, held, and minuted - all in accordance with the Act. And a Committee that doesn't adhere to these principles, and makes decisions outside of a proper meeting, takes a real risk, and is not acting properly, or in the interests of other Owners.

Fortunately, one provision in the legislation takes some of the pain out of the need for a Committee to formally get together for each meeting when some issue needs to be decided. This provision allows the Committee to properly make decisions via a 'postal poll'. This is just a postal vote on one or more issues, and is arranged by your Secretary or more usually your Body Corporate manager. The same requirements for all Owners to be advised of the outcome apply i.e. 'minutes' or in this case, the result of the postal poll need to be sent out to all Owners in a timely fashion.

For any urgent matter, the Committee can always communicate with each other by phone or e-mail, and decisions made under these urgent circumstances can always be properly ratified by a 'followup' postal poll, or at the next formal Committee meeting if one is scheduled sometime in the very near future - if one is not scheduled in the very near future, it is better to ratify any phone or e-mail decision making with a postal poll.

The Committee has broad powers, and can authorize expenditure, but there is a spending limit (per project/item) and this limit is calculated at \$125 x the number of Lots in your Scheme - so if there were 80 Lots in your Scheme, the Committee can authorize spending up to \$10,000 on any one matter.

From time to time an issue may crop up that is within the Committee's power to approve or decide on, but the Committee may decide that even though they have the

authority to make a decision on it, they wish the matter to have 'broader' democratic approval, and accordingly they might decide to put the matter on the Agenda of a General Meeting, either an upcoming AGM, or an EGM, and let all Owners have their vote on the issue. Generally though, our view is that a Committee has been democratically elected/appointed and, like the board of directors of a company, are put there to run the company, or in this case the Body Corporate, and if a matter is 'within their power' to decide, we think they should make the decision.

4.7 What if they don't work?

When a Committee is completely dormant, or perhaps worse, dysfunctional, then it can make things quite difficult, not only for the Body Corporate and Owners, but also for the Body Corporate manager.

If the situation becomes intolerable and concerned Owners feel the situation cannot wait until the next AGM, then there are avenues and options for a resolution, and these range from some intervention and mediation with the assistance of your Body Corporate manager, to the Owners voting at an EGM to terminate the commission of one or more (even the whole) of the Committee, and appointing a new Committee. But as with everything, mediation, conciliation, and consideration - are all better than conflict!



5. About Resolving a Problem with:

5.1 Noise Issues:

One way or another, most noise nuisance situations can be reduced to perhaps a tolerable level, or eliminated entirely - but like most things, some are more difficult than others to deal with.

The major categories are perhaps:

- a) preventable noise caused by inconsiderate neighbours;
- b) unpreventable - normal, everyday, noise, - from neighbours;
- c) correctable noise caused by some building element or plant;
- d) uncorrectable noise caused by some building element or plant.

Let's give an example of each....

examples of a): TV sound way too high, frequent noisy parties till too late, regular slamming of doors etc.

examples of b): routine stairwell pedestrian traffic where you can hear every coming and going.

examples of c): pool gates slam with a noisy clang every time, building driveway grates clang when a vehicle drives over them.

Examples of d): toilets flushing in unit above are clearly audible in unit below.

Each noise issue in a building can generally fall into one of the above categories - now let's see how each might be tackled.

For a) type problems we recommend that wherever possible, the affected owner does at some early stage, and in a polite but firm manner, indicate to the neighbour

concerned that their noise is creating a real disturbance. A face-to-face conversation is best if you can manage it, but if not a courteous note is second best - staying friendly with the other party is a key to easy resolution.

Remember that, providing your not being unreasonable in your demands, the law is on your side - you are entitled to 'quiet enjoyment' of your space!

If the person or persons remain inconsiderate and don't respond to reasonable demands, then the avenues open to you include:

- asking the resident manager(if you have one) of the building to action what may well be a By-Law breach. There is always a By-law covering the issue of noise nuisance by another occupier.
- asking the Body Corporate manager to action a possible By-law breach;
- your putting the matter before the Commissioner's Office as a formal dispute - this should really be a 'last resort' avenue where other measures have been tried and have failed!

For b) type problems we recommend that an analysis of the cause of the noise and the primary method of transmission be conducted to see if the nuisance can be reduced - sometimes it can. An acoustic consultant's advice is likely to be helpful. For example, Bodies Corporate should be very wary about granting approval for Lot Owners to replace soft floor coverings with hard timber or tile floors - such a replacement, even with the inclusion of a buffering insulation layer, will nearly always adversely impact the poor unit occupier below. Another 'fix' involves uncarpeted tiled stairwells - these create a lot of noise intrusion into units, and a decision to carpet the stairs can make a big improvement.

For c) type problems we recommend asking for some expert advice - again a lot of issues can be fixed. For example, pool safety fence gates are a routine problem with noisy slamming, but a good door closer can be fitted to these and the noise problem completely eliminated. And the regular slamming apartment doors can be rectified in a similar way - and the problem solved forever (note that the door closers usually originally fitted cannot close a door silently, but some of the better type of closers can).

For d) type problems we recommend letting owners and occupiers know that fixing the source of the noise would be prohibitively expensive, but that sometimes owners can take measures to isolate themselves from the noise. For example, if owners install noise seals around their external unit door they would be amazed at the isolation such a seal can provide. Similarly, installation of air-conditioning so that windows may be closed, and so shutout a lot of external noise can be a good solution for some problems.



5.2 Parking problems:

Our experience tells us that if a Body Corporate, i.e. all Owners, their Committee, and, if they have one, their Resident Manager, treat this delinquent parking issue with firmness, each time, every time, all the time, and clamp right down on a new owner/occupier as soon as there is a 'first occurrence' - then it becomes rapidly known in the building that there is a 'zero tolerance' for flouting the rules. That is the best way. If the Body Corporate has a pattern of leaving it become 'Rafferty's Rules' for 6 months and then try and 'tighten-up', it's a battle.

In simple terms, this will normally constitute a By-law breach. If your building has a

Resident Manager, then part of his duties is to assist with enforcement of the By-laws - to the extent that the Committee wish him to, and if the Committee want him to police parking breaches, then he needs to put some effort into doing that - targeting the offenders, giving written warnings, and in some extreme cases, removing vehicles from the site.

5.3 Inconsiderate neighbours:

This can be a tough one (see also 5.1 above - about Noise) because none of us really wants to confront our neighbours and complain - but really this is the best first step, and every step in the process should be noted down so that if the problem progresses and serious steps are needed to control it, you will have an 'audit trail' of your actions. If for some reason you simply can't initially raise the issue with the neighbours yourself, your resident manager can for you, or your Body Corporate manager can - people can be 'put on notice' for repeatable offences of inconsiderate behaviour which affects the general amenity and quality of life of another person.



5.4 Levies too high (or low):

The Levies are determined directly from the Budgets that were approved by a majority vote at your AGM - and it would normally be the case that your Committee considered and approved the Budgets prior to them going on the AGM Agenda for the approval of Owners at the AGM.

A Body Corporate is charged with the responsibility under the Act of ensuring it sets Budgets each year that will raise the required funds to meet the expected costs of the Body Corporate (Admin Fund) and also to meet forecast Capital and maintenance expenses and provision for these expenses for future years (Sinking Fund).

It is important that when Owners are considering Budgets and Levies they don't approach the issue from the standpoint of 'what they'd like to pay', but rather from the standpoint of analysis of their Body Corporate's needs and costs, and the obligations under the Act.

With regard to an Owner being concerned that levies are too low i.e. this might be an Owner concerned that their Body Corporate isn't provisioning adequately in the Sinking Fund for future Capital and Maintenance expenses - discuss your concerns with your Body Corporate manager and/or Committee members - you may be correct, in which case the matter should receive some attention, or you may be misunderstanding some issue - either way, it's important that you get your queries answered.

5.5 Poor building maintenance:

A Body Corporate must adequately maintain all of the Common Property in a good condition - this is a clear and unavoidable responsibility under the Act. Of course, what is an adequate and proper maintenance and standard, is somewhat subjective. It is the responsibility of the Committee to monitor and program all this type of activity - and for a matter that is beyond their spending authority, it is up to the Committee to arrange for appropriate Motions to authorize the work to go on a

General Meeting Agenda so that they can get the necessary approvals.
If you are concerned about maintenance issues, take the matter up, in writing, with your Committee - and send a copy to your Body Corporate manager.
If all else fails, the Office of the Commissioner is always available as an avenue to direct a Body Corporate if it is failing repeatedly to look after Owners' interests and assets.



6. About Maintenance Issues:

6.1 Routine maintenance:

It is the responsibility of the Body Corporate to ensure adequate maintenance of all Common Property is carried out, and this will usually include buildings and grounds and items of plant.

Routine maintenance is usually taken to include such things as the routine gardens and grounds maintenance, pool care, minor building repairs, routine contractual lift maintenance, routine contractual fire protection system maintenance, pest control etc. etc.

These items are to be paid for from the Administration Fund monies

Getting them done is the responsibility of the Committee to organize, but if there is a resident caretaker/manager, then the Committee may delegate the organization of these matters to him, and it would generally be part of his duties to do so in accordance with his list of duties in his Agreement with the Body Corporate.

If you as an Owner have concerns about the standard of maintenance being carried out then you should take the matter up formally with the Committee in the first instance.

6.2 Planned long term maintenance:

Things that fall into this category are the likes of building repainting, replacement of items of plant e.g. motors & fans, common area carpet replacement, lift car upgrade, etc.

All such items should be factored into the Sinking Fund Analysis report which is the long term maintenance costing and planning report for your building, and it is a statutory requirement to have one, and one which is accurate and up-to-date - and the Sinking Fund should be adequately provisioned each year by the budget to meet all forecast expenditures such as the items above.

If you as an Owner have concerns about the standard of maintenance being carried out, or the provisioning for future maintenance, then you should take the matter up formally with the Committee in the first instance.



6.3 Termites:

Termites can be a real problem as we know - and especially so for a Body Corporate because the issue of responsibility for prevention and control is sometimes unclear,

and nearly always the cost of inspection, treatment and ongoing control is very expensive.

The question of termites can come up even if they haven't been discovered in your building i.e. should there be an inspection and/or treatment before they've been actually discovered?

Then there is the question of who pays. The answer to this will often depend on which type of subdivision was used to create your Community Title Scheme i.e. was it created by Building Format Plan, or Standard Format Plan, or Volumetric subdivision?

Taking, as an example, the most common type of Scheme i.e. Building Format Plan, the Commissioner's Office has taken the view (in Dispute Adjudications) that it is the responsibility of the Body Corporate to prevent termites getting to an Owner's Lot (by way of crossing Common Property), and so it is the responsibility generally of the Body Corporate to keep the whole of the building 'termite free' - note that the situation and the responsibility might be different with a Standard Format Plan Scheme, but the area of any infestation, and where the termites are thought to have originated from can all play a factor in responsibility for treatment (and perhaps repairs!).

These are the sorts of questions a Body Corporate can face:

Does the Body Corporate get all the Lots and Common Property inspected?

Who pays for these inspections? - if it is to be the Body Corporate, does the Committee decide, or a General Meeting?

If the inspections find the buildings and grounds free of termites, and given that the inspection is only as good until the inspector walks out the front gate i.e. the termites might be on the property the next day! - when next does the Body Corporate have an inspection done? Each year? At a cost of maybe \$100/Lot, this is going to be a considerable ongoing expense!

If the inspection actually finds some active termite infestation, what next! What sort of treatment does the Body Corporate undertake to control and prevent future infestations? Often the best form of treatment is what is termed 'barrier treatment' and this can be by way of chemical barrier, or physical (stainless steel mesh) barrier - and some newer forms of baiting and control - but all options here can be quite expensive, sometimes VERY expensive. Big decisions for a Body Corporate, and the costs of treatment and control have led some Bodies Corporate to make the decision not to undertake barrier treatment, or yearly inspections, but to treat any infestation and perhaps damage repairs as, when, and if, they occur. A Body Corporate taking this approach though needs to be very aware of the risk it is taking - it is basically a gamble, and it might pay off, but the Body Corporate may well be liable for full damage rectification costs of any Lot Owner's property damaged by termites, and any consequential costs. Often termite damage can be slight i.e. when it is detected in the early stages, but we have known cases in buildings where the internal damage to one Lot alone was more than \$10,000 - and this was a plasterboard, brick and concrete building!

Owners and their Committee need to make a 'fully informed' decision when it comes to termites.



7. About Resident Managers:

7.1 Why do we have one?

If your Body Corporate has a Resident Manager then nearly always this was a decision made by the developer when the Scheme was established. In Queensland, the majority of large residential buildings have an on-site building manager, or Resident Manager - sometimes the term 'RUM' is used, meaning Resident Unit Manager.

7.2 How much do they get paid?

The Resident Manager gets paid a salary under the terms of his Agreement with the Body Corporate - that contract document will, along with other things, outline how he is to be paid, how much, when, and how yearly increments are to be decided.

7.3 What if we're unhappy with their work:

The supervision and direction of the Resident Manager is the Committee's responsibility in the first instance, and they may delegate the actual interface and communication with the manager to one person, or a subcommittee. If you as an individual Owner are concerned about how he is doing his duties, then as a general principle you should direct your concerns not to him, but to the Committee, or an individual on the Committee so that the Committee can properly consider the matter. When there is dissatisfaction about how a Resident Manager is performing his duties, care is needed to handle the situation properly so that it doesn't escalate out of control, with a lot of 'hurt feelings' all round.

It has been our experience that overwhelmingly Resident Managers do more than their Contractual 'list of duties' requires, but just occasionally we do get complaints about a 'lazy' manager, and the Committee needs to handle these situations with care and diplomacy. The Committee is charged with the responsibility of looking after the interests of all Owners, and getting the building maintained properly, and more often than not the Resident Manager's salary is one of the more significant budget costs, so the Committee does have an important responsibility in trying to ensure that there is a good working relationship with the manager, and that the work is being performed. Avoiding hostility, using mediation if necessary - every effort should be expended to avoid conflict - or worse, 'open warfare'.



7.4 Who tells them what to do?

The supervision and direction of the Resident Manager is the Committee's Responsibility in the first instance, and they may delegate the actual interface and communication with the manager to one person, or a subcommittee.

7.5 What happens when they sell?

Industry sources advise that the average length of stay of a Resident Manager is 2.8 years, so even though they generally have long term contracts, they inevitably sell at some period into the term, and assign the current Agreement to the buyer - the new

Resident Manager. Such assignment of the Agreement, which is an Agreement between the Resident Manager and the Body Corporate, needs to be approved by the Body Corporate. Under the Act, this is a power the Committee has by default i.e. the Committee can approve the assignment if they choose to exercise their power in this regard (the Committee might decide to put the matter to a General Meeting). Even though it is a Committee power, sometimes the terms of actual Agreement dictate that the assignment must be made at a General Meeting, and in such cases the Committee cannot make anything other than a recommendation - the actual decision to assign must be by way of Ordinary Resolution at a General Meeting.

The Body Corporate cannot unreasonably withhold the assignment i.e. unless there is a compelling reason why the assignment would be wrong for the Body Corporate, it must go ahead. As an example, a compelling reason not to assign might be that it was discovered that the proposed purchaser had been an absolute disaster as a Resident Manager at a previous building - if this came to light, the Committee would need to do more due diligence and come up with good and cogent arguments if they were going to recommend not to agree to the assignment. Generally though, assignments will normally be approved and go ahead, but the Body Corporate (usually the job for the Committee) has a responsibility under the Act to at least do some due diligence on the proposed new manager to ascertain his/her general suitability. Such due diligence would at least involve asking for and perusing references, reports, resumes, and include an interview with the person or persons who form the buying entity.

To compensate the Body Corporate (or share the 'spoils') in cases of 'churn', the Act provides that where a Resident Manager sells after negotiating a new Contract, or renewed Term, then the Body Corporate may be entitled to a small percentage of the sale proceeds. This right would normally be exercised by the Body Corporate - exceptions might be sale due to sudden or severe illness.



7.6 Can they be 'sacked'/terminated?

Yes, there are detailed provisions in the Act for Contract Termination, and there are usually clauses in the particular Agreement with the Resident Manager covering termination, but rest assured this would never be an easy process and likely to be expensive for all parties concerned.

Resident Managers normally have paid a lot of money for their business i.e. the rights to have the Caretaking and Letting business by way of the Agreement with the Body Corporate and they would be unlikely to see it terminated without a fight - a fight where there will likely be no winner, but everyone will pay. A Body Corporate should do everything possible to try and not get to the point where they are trying to terminate the manager's contract - and there are, and will have been a lot of other ways to resolve issues and problems.

We expect that the forced termination of a contract will be a very rare event.



8. About Annual General Meetings(and EGMs):

8.1 When is my AGM?

Each year the AGM must be held within 3 months following the end of the financial year of your Body Corporate. The exact date is usually determined by your Committee, subject to the schedule of the Body Corporate manager.

8.2 Who sets the topics/agenda?

The Body Corporate manager normally compiles the Agenda in conjunction with the Committee and will commence by adding Statutory Motions that must go on every AGM Agenda, then Motions will be added that Owners have submitted (these must have been submitted prior to the end of the financial year), and finally Motions that the Committee want added.

8.3 How can I add a Motion?

Any Motion from an Owner must reach the Secretary prior to the end of the financial year of the Body Corporate in order for that Motion to be included on the Agenda of the AGM - if it is received late, the Motion will be held over and must be placed on the Agenda of the next General Meeting of the Body Corporate following the AGM, unless the Owner who submitted the Motion asks for it to be withdrawn.


Unless you have complete confidence in your ability to draft a legally correct Motion, we suggest you request assistance from your Body Corporate manager to get the wording correct - an incorrectly worded Motion, or one that may be in contravention of the legislation, runs the risk of being ruled out of order at the meeting by the Chairman and not put to the meeting.



8.4 Do I have to attend?

No, you don't have to attend, nor are you required to vote, however you can have your say and vote without attending by completing the voting paper which will be sent out to you (at least) 21 days prior to the date of the meeting.

8.5 Do I have to vote?

No, voting is not compulsory on any Motion, or at any meeting - (see also above). 

8.6 What if I'm unhappy with the outcome?

If you think there was a procedural error with the conduct of the meeting, and you want it redressed, you could bring that to the attention of the Secretary in writing. If the Body Corporate fails to respond adequately as far as you are concerned you should discuss the matter with your Body Corporate manager and indicate to them that if the matter is not resolved to your satisfaction you will seek advice from the Commissioner's Office. You need to be sure of your facts first, and that is the reason

we suggest you discuss the matter fully with the Body Corporate manager - and you could also seek an opinion from the Advice Line of the Commissioner's Office - if you are still unhappy with the outcome, you can ultimately lodge a formal Dispute Resolution notice with the Commissioner's Office, but this should always be a last resort i.e. you feel that things are definitely not correct, and are important enough that you feel they should be corrected.

Apart from a procedural error in the conduct of the meeting, if you are just unhappy that a Motion was decided and you didn't agree with the way the majority decided, then you could discuss your feelings with the Committee, and/or the Body Corporate manager, but ultimately, a Body Corporate must be run democratically i.e. what the majority wants rules the day, provided what they want is in accordance with the legislation. If you feel that what was decided may not be in accordance with the legislation, you could check that issue with your Body Corporate manager and/or the Advice Line of the Commissioner's Office.

8.7 What is an EGM?

An EGM is an Extraordinary General Meeting.

A Body Corporate only has a requirement under the Act to hold one General meeting each year - that is the AGM at which the budgets for the new financial year are decided, and along with other matters, a new Committee is elected/appointed.

Apart from the AGM, if a need arises because some business the Body Corporate needs to do requires decisions to be made by Owners at a General meeting i.e. a matter or matters beyond the power of the Committee to decide, then the only option open to the Body Corporate is to hold an EGM.



9. About Committee Meetings:

9.1 How often are they held?

It is entirely up to the Committee how often meetings are held, or even if they are held at all.

Committees need to decide themselves how they will organize their affairs to attend to the regular matters of the Body Corporate, and to special issues which will always arise from time to time.

Some Committees decide that they'll have regular, more or less scheduled, meetings - these could be monthly, bimonthly, quarterly etc. Others decide to only get together as a need arises. The Act doesn't require the Committee to have any regular meetings - and apart from an implied requirement for them to formally decide the new budgets for the AGM, there is no requirement in the legislation for them to have a meeting at all.

9.2 Who can attend?

Any Owner may attend, provided they have advised the Secretary 24 hours prior to the meeting that they will be attending. And the Committee can invite anybody else to

their meeting if they wish to e.g. they might invite along some consultant who is to advise on some maintenance issue.

Owners may only take part in the actual meeting proceedings i.e. make any comment, to the extent that the Committee allows or invites them to take part - the basic right of an Owner to attend these Committee meetings extends to observance of the meeting only.



9.3 How do I get an issue raised?

Write to the Secretary well before any meeting and ask for a matter to be put on the Agenda. If you are too late in getting a matter on the Agenda, the Committee might still discuss it under 'Other Business', or might discuss it among themselves and via e-mail etc. and then if a decision is required they have the ability to make proper decisions outside of formal Committee meetings and ratify them by way of a Postal Poll.

If you feel you are being ignored, discuss your grievance with the Body Corporate manager.

9.4 What if I'm unhappy with the outcome?

You can formally put your concern to the Committee - we suggest that you do so in writing. If you feel a matter is not being handled in a 'proper' and correct way i.e. not in accordance with the Act, or the intent of the Act, discuss the issue with your Body Corporate manager. Ultimately, you can put any important grievance forward to the Office of the Commissioner as a formal Dispute Submission, but we urge you to only go down that route as a last resort.

9.5 Where are the Minutes of these meetings?

The Minutes of a Committee meeting must be mailed out to all Owners within a reasonable period following the Committee meeting.

The Minutes of all past Committee meetings, and every resolution the Committee has made are kept with the records of the Body Corporate and can be searched and inspected by any Owner (fee may apply).



10. About Body Corporate Managers:

10.1 Are they required?

It is entirely up to the Owners whether their Body Corporate engages a professional manager to look after their affairs - there is no requirement under the Act for a manager to be appointed.

Nearly all large Schemes would engage a manager, and the majority of smaller

Schemes also - the sheer complexity of the legislation and the workload for any individual Owner attempting to do this work - not to mention the responsibility and liability for 'getting it right' soon convinces members that the engagement of an experienced manager is the only sensible option.

10.2 What do they do?

A Body Corporate Manager will normally have a list of functions and duties in their Agreement with the Body Corporate and these basically will encompass the full administration of the Scheme and will typically include such matters as:

- managing the financial accounts of the Body Corporate;
- looking after insurance matters - claims and renewals, and Owner's queries;
- managing the correspondence with Owners, contractors, and other 3rd parties;
- drawing up proposed new budgets each financial year;
- calling the AGM, and sending out related Notices, Nominations etc;
- holding of the AGM, and issuing the Minutes following the meeting;
- setting up the new budgets adopted at the AGM, and the resulting Levies;
- attending to the issuance of Disclosure Statements for Owners selling their Lot;
- attending to the calling of any EGM;
- managing Committee issues, including calling of Committee Meetings and issuing Minutes of those meetings;
- advising any Owner on matters of Body Corporate law and procedure;
- managing any dispute and resolutions that may arise;
- interfacing with the Resident Manager as and when required.



10.3 How do you select a good one?

- Get references from another Body Corporate and/or Committee member
- Interview (phone up) the persons who currently use the proposed manager and ask them questions about the performance of that manager;
- Interview the proposed manager, and maybe pose questions to them about how they would handle certain issues that might be relevant to the history and experience of your Body Corporate.

10.4 Are they accountable?

Yes, they are accountable - and the Act now includes a 'Code of Conduct' for Body Corporate managers. A Body Corporate manager can be terminated for gross negligence, or nonperformance, and of course could be sued for any significant mismanagement that caused loss to a Body Corporate.

10.5 Can they be 'sacked'/terminated?

Yes, the Act includes clauses providing for termination when exceptional circumstances occur, also, the Agreement between the Body Corporate manager and

the Body Corporate will usually include clauses relating to termination for nonperformance and other reasons.



11. About appointing a Body Corporate Manager:

11.1 How do we appoint a B/C Manager?

The engagement of a Body Corporate manager requires a Motion (Ordinary Resolution) to appoint be passed at a General meeting of the Body Corporate - either the AGM or an EGM. The details of the Motion need to include the Term of the appointment i.e. how long the contract is for, and in this regard 3 years is the maximum permitted, so the Term will either be, 1, 2, or 3 years - the Motion also needs to state the cost of the engagement to the Body Corporate, and when the engagement is to commence and when it will end.

Included with the meeting documentation needs to be a copy of the Agreement the Body Corporate would be expected to enter into - all Owners need to see the Agreement details and the 'fine print'!

If more than one manager is being proposed i.e. the Committee is submitting proposals from a few managers for the Meeting to choose from, or there are proposals submitted from a number of Owners for other managers, whenever there is more than one proposal submitted they cannot go before the meeting as multiple Motions as this is deemed too confusing and the Act now requires the Secretary to compile these multiple Motions into a single 'Motion with Alternatives' - so it would be a single Motion with Option (a), (b), (c) for example.

Yes, we know it's a little bit complicated - we have more details [here](#) for you, including examples of the Motion you would submit to the Secretary to go on the Agenda of a meeting. If you need further assistance don't hesitate to ask.



12. About changing Body Corporate Managers:

12.1 How do we terminate our current Manager?

This would be a significant step, and accordingly we would advise as follows:

1. Always try and 'work things out' with your current manager before making moves to someone new. We recommend the Committee formally sit down with the current Body Corporate manager and talk through the issues which they find unsatisfactory.
2. Do you have expectations of your manager which are unreasonable? Are you asking or expecting them to perform functions which are not in their contract?
3. If the Committee have considered the points made above, and have made clear to

the manager what aspects of their performance they are unhappy about, then we recommend that the Committee write to the manager and formally document their complaints and 'put them on notice'. This serves to properly document the grievances and is an important step should the Body Corporate subsequently move to terminate the contract prior to its normal expiry.

4. If the Body Corporate has gone through the process of talking with the manager, documenting their grievances, waiting for a period for some improvement, and they have now come to the decision that they wish to proceed to terminate the manager, then the BCCM Act details the necessary procedures:

Under Sect 86(Standard Regulation Module) Sect 84(Accommodation Regulation Module) a Body Corporate manager may have their contract terminated if the Body Corporate passes an Ordinary Resolution at a general Meeting to do so. There are various grounds for termination under the Act, and in the case of 'failing to carry out duties under the engagement', the Body Corporate needs to have already gone through the process of issuing to the manager a 'Remedial Action Notice', with the manager having failed to remedy.

5. Notwithstanding the above, the incumbent manager may just release the Body Corporate from the contract without having to go through the formal termination process above - obviously by this stage there is likely to be some ill-will between the parties and such a release from the contract would be the easiest way to settle matters.

12.2 How do we appoint the replacement?

Refer to 11.1 above, and also some detailed information on [this](#) page.

12.3 What about all our records and funds?

Do not worry about this aspect of a changeover, the Body Corporate is fully protected by the law in this regard - the Act stipulates that the outgoing manager must release and pass over all the records and funds of the Body Corporate and this extends to data on computer storage systems - and it needs to be done in a manner and timeframe that doesn't disrupt the Body Corporate needlessly.



13. About getting more advice and assistance:

13.1 What avenues are there to get more advice?

We can suggest the following resources:

1. Your current Body Corporate manager;
2. The 'advice line' of the Office of the Commissioner for Body Corporate and Community Management tel:1800-060-119 and you can also e-mail the Commissioner's Office bccm@dtftwid.qld.gov.au however it's been reported to us that the response time to an e-mail query can be slow.
3. A lawyer - we would advise consulting a lawyer who specializes in property and

Body Corporate law;

4. Posting a question in the Forum here: www.strataliving.com

5. Checking the 'resources' pages of the above www.strataliving.com site.

13.2 What is the process for complaining to the Office of Fair Trading?

It is a formal process of lodging a Dispute Resolution application with the Dept., and in our view should be considered a 'last resort' step i.e. if it is an individual Owner, or a group of Owners, or the Committee that have an issue that needs to be resolved, there is an obligation on that party to take other steps to attempt to resolve the matter before putting it to the Dept. as a 'Dispute'. Avenues that should possibly be considered first might include:

1. discussion with your Body Corporate manager in a formal way;
2. a formal mediation session;
3. getting advice from another party - the Commissioner's advice line, a lawyer, etc.

A reminder that when a Dispute Resolution has been lodged with the Commissioner, copies of all related Notices received in relation to this matter must be sent to all owners, and all costs relating to the distribution of this material is borne by the body corporate.

13.3 When do we need to speak with a lawyer?

Probably when you, or if the matter is one the Committee is dealing with - the Committee, consider that the issue or outcome is of a significance that it is worth spending money on legal fees. There are avenues of support that cost little or nothing, and it would usually make sense to explore these first.

An experienced Body Corporate manager will generally be able to advise when a particular matter is likely to need some input from a lawyer - and you should probably follow such a recommendation.



13.4 Who pays for the lawyer?

If the Committee makes a decision to engage a legal firm for advice, then generally it will be the Body Corporate that will pay the fees, an exception to this is where the Body Corporate has engaged a lawyer, but there is prior agreement that the cost of the legal fees will be wholly or partly met by another party e.g. when a Resident Manager decides to sell and wants to assign his Agreement, the Body Corporate is wise to get a lawyer to represent Owner's interests, and in such cases it is normal for the Resident Manager to agree to pay the Body Corporate's 'reasonable' legal expenses.

If you as an individual decide you need legal advice, it would be your responsibility to meet the lawyer's expenses.